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EXAMINER

SHEIKH, ASFAND M

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

7
8 *Ex parte* LEONARD ROBERT SPEISER,
9 NICHOLAS DAVID POSNER,
10 JANNIE LAI, and
11 LOUIS M. MONIER
12

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14 Appeal 2010-010008
15 Application 10/666,681
16 Technology Center 3600
17

18
19 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
20 ANTON W. FETTING, *Administrative Patent Judges*.
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE²

Leonard Robert Speiser, Nicholas David Posner, Jannie Lai, and Louis M. Monier (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 15-22, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellants invented a way to recommend listings in a network based electronic commerce system (Specification ¶¶ 0002).

An understanding of the invention can be derived from a reading of exemplary claim 15, which is reproduced below [bracketed matter and some paragraphing added].

15. A method of providing listing recommendations to users of a network-based commerce system including a plurality of listings arranged in a plurality of divisions, the method including:

[1] identifying a division of the plurality of divisions

based on user interaction with the network-based commerce system;

[2] identifying at least one frequently used search term associated with the identified division; and

² Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed January 22, 2010) and the Examiner's Answer ("Ans.," mailed April 15, 2010).

1 [3] providing a link to the user
2 to listings associated with the at least one
3 frequently used search term.

4 The Examiner relies upon the following prior art:

Spiegel US 6,466,918 B1 Oct. 15, 2002

5 Claims 15-22 stand rejected under 35 U.S.C. § 102(a) as anticipated
6 by Spiegel.

7 ISSUES

8 The issue of anticipation hinges on whether Spiegel describes
9 providing a link to listings associated with a frequently used search term that
10 is identified by Spiegel's system.

11 FACTS PERTINENT TO THE ISSUES

12 The following enumerated Findings of Fact (FF) are believed to be
13 supported by a preponderance of the evidence.

14 *Facts Related to the Prior Art - Spiegel*

15 01. Spiegel is directed to automatically identifying the
16 most "popular" nodes (categories and/or items) within a browse
17 tree or other hierarchical browse structure, and for calling such
18 nodes to the attention of users during navigation of the browse
19 structure. Spiegel 1:60-66.

02. The portions of Spiegel cited by the Examiner at Answer 4 describe identifying a frequently used hyperlink that identifies a category name and providing a link to it.

03. Spiegel describes selecting a hyperlink category to limit a field of search. Spiegel 2:16-23.

04. Spiegel describes using the product as a search term and using the number of times the product is used as such a search term as indicia of popularity in creating a popularity table. Spiegel 12:10-18.

05. Spiegel uses the popularity table to determine which items, including products, to display with hyperlinks to the user. Spiegel 11:36-39.

ANALYSIS

Claim 15 is the sole independent claim and the only claim argued. Limitations [2] and [3] require providing a link to listings associated with a frequently used search term that is identified by Spiegel's system. The Appellants argue Spiegel fails to describe this, but instead uses frequently browsed hyperlinks associated with category names. Appeal Br. 10-12.

The Examiner cites several portions of Spiegel that describe using frequently browsed hyperlinks associated with category names. Ans. 4 and 6. The Examiner responded that

[t]he examiner respectively disagrees and notes that a category as interpreted can be a search term as it is used provide the activity of looking thoroughly in order to find something. Therefore under a reasonable interpretation a category is in fact

1 a form of a search term therefore the examiner finds these
2 arguments not persuasive.

3 Ans. 7. We agree with the Examiner. Limitation [2] only requires
4 that a frequently used search term that is some manner associated with a
5 division be identified. Limitation [2] does not limit the manner in which
6 such identification takes place. In particular, the claim does not require that
7 the identification be based on some process that in turn identifies a
8 frequently used search term. It is sufficient that there be identified some
9 term that could be fairly characterized as frequently used search term in
10 some undefined context that is in some form of association with a division.
11 Clearly, Spiegel's categories are identified by Spiegel's hyperlinks and are
12 in association with Spiegel's divisions. Spiegel's categories name categories
13 within which products may be searched, and so would be frequently used
14 search terms in other analogous contexts.

15 Further, Spiegel describes using products in search terms as another
16 way of returning such hyperlinks for display in an alternative embodiment to
17 that cited by the Examiner. FF 04 - 05.

18 CONCLUSIONS OF LAW

19 Rejecting claims 15-22 under 35 U.S.C. § 102(a) as anticipated by
20 Spiegel is not in error.

21 DECISION

22 The rejection of claims 15-22 under 35 U.S.C. § 102(a) as anticipated
23 by Spiegel is sustained.

